

The Honorable David G. Estudillo  
**Trial Date: May 22, 2023**

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

ELIAS PENA, ISAIAH HUTSON, and  
RAY ALANIS,  
  
Plaintiffs,  
  
v.  
  
CLARK COUNTY, WASHINGTON,  
  
Defendant.

No. 3:21-cv-05411-DGE

DEFENDANT’S MOTION TO CALL  
WITNESS OUT OF ORDER

NOTED ON MOTION CALENDAR:  
May 22, 2023

Defendant Clark County respectfully requests the Court’s permission to call defense witness Dr. Eric Doerfler, M.D. on May 30, 2023 at 10:30am-12:00pm, which Defendant acknowledges may occur during the end of Plaintiffs’ presentation of their case in chief. It is within the Court’s discretion to allow witnesses to present testimony out of order and, for the following reasons, Defendant asserts that doing so would be appropriate in this circumstance to ensure Defendant is able to adequately present its case without foregoing witness testimony due to a scheduling conflict. *See Johns v. Misty Blue Inc.*, 149 Fed. Appx. 685, 688 (9th Cir. 2005) (Wardlaw, Circuit Judge, concurring) (agreeing with majority’s decision to vacate order denying new trial motion, noting, “although district court judges have broad discretion in managing their trials,” the trial court should have allowed a party to call a witness out of order after counsel refused to allow other party to present witness out of order at a time he was willing and able to testify).

DEFENDANT’S MOTION TO CALL WITNESS OUT OF  
ORDER - 1  
3:21-cv-05411-DGE

1135-00007/Defendant's Motion to Call Witness Out of Order

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1 Dr. Doerfler is Plaintiff Hutson's treating doctor who is expected to testify regarding  
2 Plaintiff Hutson's claimed emotional distress damages and claimed physical symptoms.  
3 According to his office, Dr. Doerfler will be out of town and unavailable to attend trial June  
4 1-June 20, 2023. Dr. Doerfler is available to attend trial via Zoom the morning before his  
5 departure on May 30, 2023, at 10:30am-12:00pm.

6 Prior to submitting this request to the Court, Defense counsel corresponded with  
7 Plaintiff's counsel, requesting that Plaintiffs agree to allow Dr. Doerfler to testify during his  
8 available time. Plaintiffs have opposed this request, indicating they believe it would be more  
9 appropriate for Dr. Doerfler's testimony to proceed despite his unavailability via Zoom or be  
10 perpetuated in advance of trial.

11 Anticipating Dr. Doerfler's testimony is unlikely to last more than thirty minutes to  
12 an hour, Defense counsel does not believe it would be an efficient use of the parties' resources  
13 to schedule a last-minute perpetuation deposition instead of allowing Dr. Doerfler's direct  
14 examination to occur during the time period he is available, May 30<sup>th</sup> from 10:30am-  
15 12:00pm. Moreover, Dr. Doerfler's office has indicated he is not at all available from June 1  
16 to June 20, which likely will include the full time period that Defendant will have an  
17 opportunity to present its case, and therefore calling him out of order—via Zoom or  
18 otherwise—will be necessary for this particular witness.

19 For these reasons, Defendant respectfully requests the Court's permission to call Dr.  
20 Doerfler via Zoom during the time period he is available to attend on May 30, 2023.

1 DATED: May 16, 2023

2 KEATING, BUCKLIN & McCORMACK, INC., P.S.

3  
4 By: /s/ Audrey M. Airut Murphy  
Audrey M. Airut Murphy, WSBA #56833  
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DEFENDANT'S MOTION TO CALL WITNESS OUT OF  
ORDER - 3  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DEFENDANT'S MOTION TO CALL WITNESS OUT OF  
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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: n/a

DATED: May 16, 2023

/s/ Audrey M. Airut Murphy

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DEFENDANT'S MOTION TO CALL WITNESS OUT OF  
ORDER - 5  
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